THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANGUILLA

CLAIM NO.: AXAHCV2017/0018

IN THE MATTER of an Application by Tropical Distributors Company Limited for Leave to make a Judicial Review Claim

And

IN THE MATTER of a Decision made by the Permanent Secretary in the Ministry of Finance granting a Business Licence to International Wines & Spirits Ltd.

And

IN THE MATTER of the Trades Business, Occupations, and Professions Licencing Act RSA Cap T40.

BETWEEN:

TROPICAL DISTRIBUTORS COMPANY LIMITED

Applicant

and

PERMANENT SECRETARY MINISTRY OF FINANCE

ATTORNEY GENERAL

Respondents

APPEARANCES:

Tana'ania Small and Navine Fleming of Libran Chambers for the Applicant
John McKendrick Q.C. Attorney General for Respondents

2017: December 12;
2018: March 20.

DECISION

[1] **BELLE, J.:** I have decided that leave should not be granted to the Applicant to file a Claim for Judicial Review to quash the granting of a business licence to International Wines and Spirits Limited (hereinafter referred to as IWAS) on the basis that it was issued ultra vires the **Trades Businesses, Occupations, and Professions Licensing Act**[1], ("the TBPLA")

[2] My reasons follow:
A grant of leave to file a claim for judicial review is based on the presentation of an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy. This principle is enunciated in the case of **Sharma v Antoine**[2].

[3] I have determined that only one ground argued before me presented a realistic prospect of success, subject to a discretionary bar. The ground which appears arguable is that stated in support of the application for a declaration that the grant of a business licence on 20 July 2016 by the Principal Assistant Secretary in the Ministry of Finance, Economic Development, Commerce & Tourism to International Wines & Spirits Ltd is null and void and of no legal effect. This is arguable because the TBPLA specifically provides for the Permanent Secretary to grant the Business Licence.

[4] I will traverse the other issues argued to show how I arrived at my decision to refuse leave.

[5] The Applicant argued the following grounds for judicial review:

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[1] RSA Cap T 40
[2] [2007] 1 WLR780

(a) Breach of the principles of natural justice, specifically the duty to act fairly and procedural unfairness in the failure to consult with the stakeholders in the business sector for which the licence was granted to IWAS;
(b) Failure to properly consider the application for licence, which was made by a company that was a non-belonger company and who was required by the control of Employment Act to have a work permit;
(c) Failing to take into account all relevant considerations;
(d) Denying the applicant's legitimate expectation that it would be given an opportunity to be heard before any licence was granted to IWAS.

[6] In **Council of Civil Service Unions v Minister for the Civil Service**[3] at page 1196 A-F Lord Diplock explained that there are three grounds by which an administrative action is subject to judicial review. The first ground is "illegality" that is, the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it.

[7] The second ground is "irrationality," which was a concept developed in the Court of Appeal decision **Associated Provincial Picture Houses Ltd v Wednesbury Corporation**[4]. In coming to a decision of irrationality the court is entitled to investigate whether the local authority took into account relevant matters or came to a conclusion so unreasonable that no reasonable authority could ever make it.

[8] The third is "procedural impropriety" which will depend on the subject matter of the case but involves observing rules of natural justice which include a right to notice and opportunity to be heard.

[9] The Applicant claims to have suffered loss as a result of the grant of a business licence to IWAS. While the loss may be arguable, it is argued by the Respondent, based on the affidavit of the Applicant, where one of the Applicant's representative

[3] [1984] 3 WLR 1174
[4] [1948] 1 KB 233 CA

gives an account of the visits made by himself and others to the Ministry of Finance over the relevant period, May to September, 2016 where the possible threat to its business was raised. It is also relevant that the Applicant was indeed given an opportunity to consult with the relevant Ministry after the business licence was granted. Indeed there is no procedure enshrined in the TBPLA which requires that the Applicant be permitted to question the grant of an issue of a business licence. But nevertheless the evidence is that the Applicant had access to the relevant ministry and utilised that access at the operative time.

[10] In paragraph 8 of the affidavit of Willis Hodge the General Manager of the Applicant Company Tropical Distributors Company Limited, Mr Hodge states:

> "Mr David Hodge and I visited the Ministry of Finance on 4th July, 2016 along with Mr Keithly Lake... to further advance our case and the position that the Chamber of Commerce should be given the opportunity to weigh in on all business licence applications that are submitted to the Permanent Secretary in the Ministry of Finance. We specifically asked the question as to whether International Liquors and Antillean Liquors had applied for a licence and again the Chief Minister indicated he did not know of such a licence."

[11] Indeed the affidavit as a whole provides the factual information that the applicant's representatives had communicated their concerns in respect of IWAS business licence at meetings on 7th May, 4th July and 9th September, 2016. This factual background puts into question the paragraph (a) of the Applicant's grounds. The court is not interested in the substance of the discussions between the parties at these meetings but the fact that the meetings took place addresses the issues of a right to a hearing and procedural fairness in that respect.

[12] It is well known that judicial review is not concerned with the reversal of a policy decision. Judicial review is concerned with whether the decision maker acted lawfully, irrationally or adopted the wrong procedure etc.

[13] To further explore the matter of the procedure adopted the court will examine the relevant statutory provisions.

[14] The statutory provision which creates the legal basis for the issue of the business licence is Section 3 of the TBPLA, which states:

> "Every person carrying on any trade, business, occupation or profession set out in the Schedule shall take out an annual licence in accordance with the provisions of the Act in respect of each premises or place where such trade or, business, occupation or profession is carried on, and shall only carry on such trade, business, occupation or profession from such premises or place.

[15] Section 7 of the TBPLA states:

> Grant of licence
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> "7. (1) On being satisfied that an application under section 5 has been properly made and the correct fee tendered, the Permanent Secretary shall within 15 days of any application, whether for a new licence or a renewal, grant such licence unless-
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> (a) the applicant is a non-belonger who is not the holder of a work permit under the Immigration and Passport Act; or
> (b) the applicant is, under the provisions of this or any other law, disqualified from holding the licence sought.
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> (2) The Permanent Secretary may attach such conditions or restrictions to a licence as he may deem necessary to confirm with the purposes of this Act. Any such conditions or restrictions imposed by the Permanent Secretary shall be subject to appeal to the Magistrate by notice of appeal in writing made within 30 days of the imposition."

[16] As can be seen, section 7 of the Act provides for certain conditions to be met before a licence is issued. But the Applicant who alleged, based on an application form used in the application process, that IWAS was a non-belonger who did not have a work permit, is unable to substantiate this allegation since it never requested disclosure nor was IWAS who could respond to this allegation, made a party to the proceedings.

[17] In my view, the issue whether IWAS was in possession of a work permit pursuant to the Control of Employment Act should not be a matter raised for Judicial Review of the issue of a business licence pursuant to the TBPLA and used to support

another allegation that the Respondent failed to apply certain considerations to the application process, unless the relevant section breached affecting the issue of work permits is also examined and some inquiry is made to determine independently whether a work permit was issued. There is no evidence that the relevant authority was even asked this question.

[18] Indeed it appears on the face of the TBPLA that the main effect of being a non-belonger is that the requirement of the grant of a licence in 15 days does not apply. What this implies is that the requirement that the applicant obtains a work permit and satisfy other queries affects the time it takes to obtain a grant of a business licence. The time limit of 15 days is therefore subject to that reality.

[19] There is therefore no evidence of a breach of natural justice or an unfair procedure in relation to the Applicant's concerns about the issue of a business licence to IWAS. In my view this ground of attack fails and therefore is dismissed as a ground for the grant of leave for judicial review.

Legitimate Expectation

[20] The Applicant next argues that the Applicant has a legitimate expectation that its representatives would have been given a hearing before a business licence was issued to the business licence applicant IWAS.

[21] This legitimate expectation is based on the alleged promise of the Minister of Finance that the Applicant would be given a hearing and allowed to consult before the licence was issued, because of the Applicant's material interest in the issue of the licence. The Applicant relies on a line of cases which provides applicants with this argument where promises were made and not kept. One such case is **Regina v Liverpool Corporation Ex Parte Liverpool Taxi Fleet Operators Association**[5].

[5] [1972] 2 QB, 299

[22] It is important to note at the outset that there is no clear confirmation that there was such a promise made by the Minister of Finance. No such promise has been confirmed and it is not a written promise. Secondly, the promise was not made by the Permanent Secretary to whom the application for the business licences has to be made. Consequently, there is no promise which is "clear unambiguous and devoid of relevant qualification" made by the "decision maker" in this case. The application therefore fails to establish the criterion of the argument of legitimate expectation, see **R v Secretary of State for Education**[6].

[23] Furthermore in **Regina v Liverpool Corporation Ex parte Taxi Fleet**, the England and Wales Court of Appeal held that "in view of the past history of the matter and in particular the undertaking publicly given to the applicants on behalf of the council, the applicants were justifiably aggrieved by the council's subsequent unfair conduct." Accordingly, the court ordered prohibition against the relevant public body from acting on resolutions which went contrary to an undertaking given to taxi owners and which the court characterised as "breaking the undertaking as they pleased."

[24] Moreover **Regina v Liverpool Corporation Ex Parte Taxi Fleet** involved a clear undertaking not to increase taxi licences beyond 300 until proposed legislation in the form of a private Bill, which included provisions controlling private hire vehicles, had been enacted by Parliament and had come into force and the undertaking was confirmed orally both by the chairman of the council to the applicants and also by letter dated August 11 from the town clerk. Clearly this is not the equivalent of the alleged promise made in this case, only to give the Applicant a hearing, which was not made by the decision maker who has to consider the issuing of the licence. In my view the ground of legitimate expectation does not pass the "arguable case" test. See; **McInnes v Onslow Fane and**

[6] 1995 [E.L.R] 308

another[7]. And there was no evidence that the Permanent Secretary or his Principal Assistant Secretary acted other that honestly and without bias or caprice.

[25] I know of no other legal considerations under the TBPLA which should be given to the granting of a business licence and which would affect the granting of a licence to IWAS and be of concern to this court in an application for leave to file a claim for judicial review.

The Further Amended Application

[26] At the hearing of this matter the Respondent complained that the Applicant has filed a further amended application which was before the court and which formed the basis for certain arguments made by the Applicant. The Respondent argued that the Applicant should have sought the court's leave to file a further amended application. I agree.

[27] The peculiar thing about the proceedings which preceded the present hearing is that they were subject to a case management order made on 30th June 2017. In that order the Learned Judge, Ramdhani J (Ag.) granted leave to amend the application which was before the court and to file the said amended application on or before 7th July, 2017. The Applicant did file an amended application pursuant to that order but later, on 24th October, 2017 proceeded to file a further amended application. I think that this was improper and unfair to the Respondents who would have prepared for a hearing and filed submissions based on the amended application of 7th July, 2017, only to find as they completed their preparations that the Applicant filed a further amended application and purported to proffer their arguments based partly on that further amended application.

[28] What made the unilateral further amendment even more egregious is that Ramdhani J's case management order required that the Respondent file and

[7] [1978] 3 All ER 211

serve skeleton submissions with authorities on or before 7th September, 2017 and the hearing or the matter was to be scheduled in the week of 18th September, 2017. Yet the Applicant proceeded to file a Further Amended Application on 24th October, 2017. It is true that apparently because of a hurricane, the court could not sit during the week of 18th September, 2017. But this does not excuse the step taken by the Applicant without the leave of the court. I therefore hold that the Further Amended Application filed on 24th October, 2017 is not properly filed and shall play no role in these proceedings. Consequently any submissions based on the said amendment will be ignored by this court.

Delay

[29] Counsel for the Respondent also argued that the Applicant was guilty of undue delay in filing the application for leave. Counsel cites the relevant Rule of the CPR, CPR 56.5(2) which states:

> When considering whether to refuse leave or to grant relief because of delay the judge may consider whether the granting of leave or relief would be likely to:
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> (a) Be detrimental to good administration; or
> (b) Cause substantial hardship to or substantially prejudice the rights of any person.

[30] Counsel argues based on this rule and the legal principle of delay being a reason to refuse relief that the Applicant knew that the licence had been granted in September 2016 based on their statement in paragraph 10 of the affidavit of Mr. W. Hodge. Yet the Applicant failed to file an application until March of 2017.

[31] I agree that this was undue delay since it would be known that the removal of a business licence six months into the operation of a business would cause extreme hardship to the business affected. Consequently, this application must be refused since it would be both detrimental to good administration and cause substantial hardship to and prejudice the rights of IWAS who had been refused an opportunity to appear in the proceedings as an interested party.

[32] The Applicant's application for leave to file a claim for judicial review is therefore dismissed.

[33] I make no order as to costs.

JUSTICE FRANCIS H.V. BELLE
HIGH COURT JUDGE

BY THE COURT

REGISTRAR